

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

DECISION & ORDER

-vs-

04-CR-6128

JOSEPH HERNANDEZ,

Defendant.

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FILED  
2007 JUN -6 AM 9:03  
U.S. DISTRICT COURT  
W.D.N.Y. ROCHESTER

This Court referred all pretrial motions in this indictment to United States Magistrate Judge Marian W. Payson. Defendant, Joseph Hernandez, filed various motions, including a motion to suppress evidence derived from electronic surveillance. Papers were submitted and Magistrate Judge Payson heard oral argument on May 1, 2007. On that date, Magistrate Judge Payson entered an oral order recommending denial of defendant's motions to suppress evidence obtained from electronic intercepts.

Defendant Hernandez duly filed objections to that Report and Recommendation (Dkt. #404). I have reviewed the Magistrate Judge's Report and Recommendation (Dkt. #395) and the objections and the audio tape of Magistrate Judge Payson's determination has been made available for the Court to review.

Defendant asserts now that suppression is warranted because the Government failed to obtain the proper authorization for the electronic surveillance and because the agents failed to minimize the

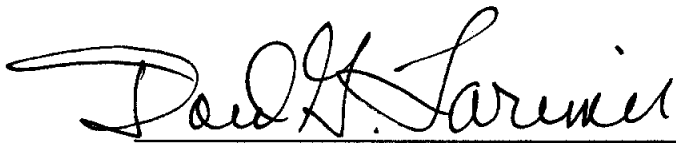
intercepted conversations. I agree with Magistrate Judge Payson and find no basis whatsoever to suppress evidence obtained from the wiretaps. The authorization is in proper form and, although the Government did intercept a substantial number of calls, there was appropriate steps taken to minimize the interceptions and limit those reserved for utilization at trial. For these reasons, I deny the objections and adopt and accept Magistrate Judge Payson's Report and Recommendation in all respects.

Defendant also objects to Magistrate Judge Payson's decision and order denying a bill of particulars, dated May 10, 2007 (Dkt. #403). On review, the test is whether the Magistrate Judge's decision is clearly erroneous and contrary to law. I have reviewed the application as well as Magistrate Judge Payson's decision and find no basis to deny or modify the decision denying a bill of particulars.

#### CONCLUSION

I accept and adopt the Report and Recommendation of United States Magistrate Judge Marian W. Payson (Dkt. #395) in all respects. I deny and reject defendant's objections (Dkt. #404) to that report. Defendant Joseph Hernandez's motion to suppress evidence obtained from electronic surveillance is in all respects denied. Defendant's objection to Magistrate Judge Payson's decision and order denying a bill of particulars (Dkt. #412) is also denied, in all respects.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", written over a horizontal line.

DAVID G. LARIMER  
U.S. District Judge

Dated: Rochester, New York  
June 5, 2007